

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 004436

SIPDIS

LONDON AND PARIS FOR AFRICA WATCHERS

E.O. 12958: DECL: 10/25/2015

TAGS: [PGOV](#) [PREL](#) [ECON](#) [SENV](#) [KDEM](#) [KCOR](#) [KE](#)

SUBJECT: "OFFICIAL" CAMPAIGN PERIOD KICKS OFF AS PRESIDENT ENTERS THE FRAY

REF: A. (A) NAIROBI 4246

[B](#). (B) NAIROBI 3781

Classified By: A/Political Counselor Lisa Peterson for reasons 1.4 (b,d)
)

[1](#)1. (C) SUMMARY: The "official" period for campaigning for or against the proposed draft constitution kicked off on October 21, with the banana "Yes" team on the defensive following the publication of unfavorable opinion poll results and President Kibaki attracting criticism for allegedly defying a High Court order. Violence continues to mar the now official "Yes" and "No" rallies with two recent events requiring police and tear gas intervention. With less than one month remaining before the vote, some focus has shifted to the heretofore relatively quiet Kibaki, and the extent to which he will exert his executive authority over other legally independent branches of the government to secure votes in favor of the proposed draft constitution. END SUMMARY.

BANANAS AND ORANGES CRY SOUR GRAPES

[1](#)2. (SBU) Just in time for the start of the official campaign period, local media reported the results of a nationwide opinion poll on October 22, highlighting the finding that the "Yes" team trails the "No" campaign by ten percentage points. Also of note, nearly a quarter of Kenyans polled had not yet decided, and of those who had, many were not firm in their choice. While the anti-draft Orange group argued that the margin was actually wider, supporters of the draft constitution also cried foul, disputing the conclusion that "Yes" is behind at all, and reverting to their now-familiar refrain of questioning the funding behind the poll. Despite their reported lead in the referendum race, two of the first "official" Orange rallies on October 23 and 24 turned ugly at the hands of pro-draft youths, who were ultimately dispersed by police and tear gas.

KIBAKI FLEXES HIS EXECUTIVE MUSCLES

[1](#)3. (U) For "No" voters, according to the poll, an important consideration was the strength of the executive in the proposed draft, an issue that made headlines earlier in the week. On October 15, President Mwai Kibaki distributed land titles to members of the Ogiek community whom the government had previously evicted in the interest of preserving the Mau forest complex, immediately sparking outcry that the leader had wittingly and openly defied a court order in doing so. The Kenya High Court issued an order on October 14 calling for suspended action on land awards to the displaced Ogiek pending decision on a case that some members of the community had been excluded. Critics argue that by proceeding in spite of the court's decision, Kibaki had publicly and brazenly suggested he was above the law, and that he had issued the titles in an effort to win support for the proposed draft constitution (ref A).

[1](#)4. (C) According to the President's official website, Kibaki dismissed as "cheap propaganda" the claim that he handed out the deeds to "solicit favors," and chastised his critics for politicizing the matter. Kibaki's defenders argue that the court order applied to the Ministry of Lands, and not the President, and that it referred to the "issuing" of deeds, a lengthy process separate from the President's action, which was simply to formally hand them over. However, International Commission of Jurists (ICJ) Kenya Chairman Otiende Amollo told poloff that a court order prohibiting an action applies equally, and that while awareness of the decision could factor in determining disobedience of a court order, there is no question in this case that the President knew of the ruling.

[1](#)5. (C) Highlighting the matter as an executive abuse of power, an October 21 "Kenya Times" editorial observed that while Kenyans had come to expect ministers and other officials to break the law, having the President "thumb his nose" at the judiciary has opened a new, more worrisome chapter. A separate report called for the Chief Justice, as head of an independent branch of the government, to reprimand Kibaki. The ICJ's Amollo concluded, however, that despite the uproar, the President's defiance would likely go

unchecked.

DON'T UNPACK JUST YET

16. (U) The majority of the title deeds that Kibaki handed out would resettle the recipients back in the Mau forest, from where they were recently evicted (ref B). Those evictions, carried out in an abusive and heavy-handed manner, were part of a larger GOK effort to revitalize the country's heavily deforested "water towers," the source of household and agricultural water for most of central Kenya. The East Africa Wildlife Society (EAWLS), which, along with other organizations and individuals, filed a case in 2002 to stop the illegal settlement in the Mau Forest, issued a press statement that the "reopening of illegally excised forest to settlement and issuance of title deeds to these forest settlers is in breach of law and is in contempt of court" and cautioned that the "beneficiaries should be aware of the probability that they will be evicted again." The next High Court of Kenya hearing on this case is scheduled for November 28, a week after the referendum.

17. (C) COMMENT: Even if the plan to resettle Ogiek evictees had long been in the works, as Kibaki claimed, the timing with respect to the referendum is suspect, and the action with respect to the judiciary is troubling. Kibaki's land handout will sharpen focus on his conduct in this final month before the referendum, during which he is expected to hit the campaign trail in earnest. END COMMENT.

BELLAMY